



MASSACHUSETTS ASSOCIATION OF REALTORS®

January 17, 2012

Federal Election Commission
999 E. Street, N.W.
Washington, DC 20463

Attn: Jeff S. Jordan, Supervisory Attorney
Complaints Examination & Legal Administration

RE: MUR 6520

Dear Mr. Jordan:

This letter is in response to yours dated December 28, 2011 and received on January 3, 2012 addressed to Laurie E. Cadigan, 2011 President, Massachusetts Association of Realtors® ("MAR"). I enclose a Statement of Designation of Counsel in which Ms. Cadigan, President of MAR, designates me as counsel to MAR in this matter.

The Complainant asserts that in order to succeed in her business activities it is "imperative" for complainant to be "in the MLS system," and that she is required to be a Realtor® (a member of the Berkshire County Board of Realtors®, MAR and the National Association of Realtors®¹ (NAR)) to join the local MLS system. (Complaint ¶¶1-3, p. 1). The complaint further alleges that NAR increased membership dues by \$40 per year in 2012, and that such "money would be allocated for the DIRECT support of candidates." (Complaint ¶4, p. 2). The complaint also alleges that the membership did not support this change but the "voting directors forced this initiative through." (Complaint ¶5, p. 2). Finally, the complaint asks whether "[B]y REQUIRING this dues money which will all go to lobbying and politics ... have the Realtors® violated any federal regulations?" (Complaint ¶9, p. 2).

MAR acknowledges that dues for NAR membership were increased by \$40 beginning in 2012. The MAR also acknowledges that NAR has indicated that it intends to use a portion of dues it collects from members for dues for calendar year 2012, including some or all of the \$40 increase, for lobbying and political activity. For several reasons described below, however, the complaint fails to allege that MAR has engaged in any conduct that violates the Federal Election Campaign Act ("Act"). Accordingly, I respectfully request that the complaint be dismissed.

¹ MAR is an incorporated membership organization, incorporated under Chapter 180 of the Massachusetts General Laws and exempt from federal income tax pursuant to Section 501(c)(6) of the Internal Revenue Code. NAR is also an incorporated membership organization, incorporated under the General Not For Profit Corporation Act of Illinois and exempt from federal income tax pursuant to Section 501(c)(6) of the Internal Revenue Code.

First, the complaint fails to allege a violation of the Act by MAR because it refers only to *prospective* activity by NAR, rather than conduct that is occurring or that has already occurred. ("I understand that NAR will collect millions of dollars and can come into federal, state and local elections and will have the ability to pay for ads and other items that will influence the federal, state and local elections." Complaint, ¶7, emphasis added.) Thus, by definition, no violation is alleged because the activity that Complainant suggests is or may violate the Act has not yet occurred.

Second, the complaint alleges only that Berkshire County Board of Realtors®, not MAR, "will be collecting ... dues money for NAR...." and "passing this money along to the National Group." (Complaint ¶9, p. 2). Thus, the complaint acknowledges on its face that it alleges only that NAR, and not MAR, may use the monies collected from members (by the Berkshire County Board of Realtors®) for activities that Complainant asserts will violate the Act. For this reason as well, the complaint fails to allege a violation of the Act by MAR because the only allegedly unlawful conduct described is that to be conducted by another party, NAR.

Third, and perhaps most fundamentally, the Act does not prohibit NAR from engaging in the activities for which the complaint alleges NAR intends to use 2012 member dues payments (treasury monies) collected by the Berkshire County Board of Realtors® and "passed along" to NAR. The complaint alleges, for example, that NAR "will have the ability to pay for ads and other items that will influence the federal, state and local elections." (Complaint, ¶7). Simply put, the Act does not apply to such uses by NAR of dues/treasury monies in connection with state and local candidates, and with respect to federal candidates NAR's use of such monies in support of candidates for federal office is permitted by *Citizens United v. Federal Election Commission*, ___ U.S. ____ (2010).

As described in the affidavit of Timothy Ryan, Managing Director and Chief of Staff for NAR, filed in connection with NAR's response to this complaint (a copy of which is included here for your convenience), NAR is keenly aware of, and in all respects complies with, the Act's limitations on use of treasury funds by a corporation in connection with federal elections. All lobbying and political activities for which NAR intends to use treasury monies, including those funds provided pursuant to the \$40 increase in member dues for 2012, will be those for which the use of NAR treasury funds is not prohibited by the Act. Such activities include, for example, directly lobbying of members of Congress or state or local legislative bodies, or representatives of executive or administrative agencies of federal, state, or local governments, or communications to the general public regarding legislative and similar issues of concern to the MAR, NAR, or their members. Such activities may also include political activities related to the election of candidates for local or state office, administrative support for the establishment, operation, and solicitation of contributions by NAR members to the Realtors® Political Action Committee, NAR's separate segregated fund which is registered with and reports to the Commission pursuant to the Act, communications to members of NAR regarding expressly identified candidates for local, state, federal office, or "independent expenditures" as defined in the Act, 2 U.S.C. §431(17), and permitted to be made by corporations pursuant to the opinion of the Supreme Court in *Citizens United v. FEC*, 558 U.S. __ (2010). In particular, but in

contradiction to Complainant's claim, the activities for which NAR plans to use 2012 dues money received by NAR will not, at any time, include direct or indirect contributions to federal candidates or their campaign committees, or any other federal political committees. See Ryan Affidavit ¶5. Moreover, the complaint does not provide any facts alleging otherwise.

Finally, the complaint also includes various other general inferences that conduct by the Berkshire County Board of Realtors®, MAR or NAR are unlawful. These include the suggestion that the "initiative" to "transform our Trade Association into (a) Political Lobbying and Campaign Contributing Group" was strongly opposed by the membership but "forced ... through" by the voting directors; that "in order to access the MLS in Berkshire County (she) must be a member of this Political Group" and that "such a regulation of membership ... in order for (her) to conduct (her) business" is "a form of extortion;" and that by "requiring dues money to be used for lobbying and politics... the 'Realtors' (may) have violated federal regulations." MAR respectfully suggests that such claims merely reflect the lawful use of membership association dues for political and lobbying purposes, where such dues are required as a condition of membership and a prerequisite to participation in benefits offered by the association. Moreover, inasmuch as membership dues payments are not used by the Berkshire County Board of Realtors®, MAR or NAR for any purposes prohibited by the Act, as described above, such requirements are in any event outside the scope of conduct and activities regulated by the Act

Accordingly, for the reasons set forth above, we respectfully request on behalf of MAR that the staff recognize and determine that the complaint in this matter does not allege any violation of the Act by MAR and dismiss the matter without further action. To the extent the staff deems it appropriate for the Commission to address the complaint we urge, for the same reasons, that the Commission staff take no action against MAR and that the complaint be dismissed without further action.

Very truly yours,



Stephen J. Ryan, Esq.
MAR General Counsel



FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

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OFFICE OF GENERAL
COUNSEL

STATEMENT OF DESIGNATION OF COUNSEL
Please use one form for each Respondent/Entity/Treasurer
FAX (202) 219-3923

MUR # 6520

NAME OF COUNSEL: Stephen J. Ryan

FIRM: Massachusetts Association of Realtors®

ADDRESS: 256 Second Avenue

Waltham, MA 02451-1139

TELEPHONE- OFFICE (781) 839-5506

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The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

1/13/2012
Date

[Signature]
Respondent/Agent -Signature

President MA. Assoc. of Realtors
Title (Treasurer/Candidate/Owner)

NAMED RESPONDENT: Laurie E. Cadigan, President

MAILING ADDRESS: 256 Second Avenue
(Please Print)

Waltham, MA 0245-1139

TELEPHONE- HOME () _____

BUSINESS (478) 369-6453

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation